

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Highway Information Systems |) | |
| Equipment Certification for |) | FCC Identifier O2Q-DRTXM2 |
| Traveler's Advisory Transmitter |) | |

MEMORANDUM OPINION AND ORDER

Adopted: February 20, 2002

Released: February 26, 2002

By the Commission:

I. INTRODUCTION

1. On June 28, 2000, the Commission's Office of Engineering and Technology (OET) granted the application of Highway Information Systems, Inc. (Highway) for a Traveler's Advisory transmitter. (FCC Identifier O2Q-DRTXM2.) Transportation Intelligence, Inc. (TransIntel) petitioned the Commission to rescind that grant, which the staff declined to do.¹ The Commission now has before it an application for review of the staff's affirmation of that grant, filed by TransIntel. We are affirming the staff's denial of TransIntel's Petition for Reconsideration.

II. BACKGROUND

2. The Commission's rules include equipment authorization procedures to ensure that devices that are capable of emitting radiofrequency energy comply with the applicable rules and technical standards. Section 2.803 of the rules prohibits the marketing or importation of any radiofrequency device until the applicable equipment authorization procedures have been satisfied.² Highway's Traveler's Advisory transmitter is subject to the equipment authorization procedure, which requires that the device receive a grant of Certification from the Commission.³ An equipment authorization issued by the Commission may not be transferred to another person or party without prior notice to the Commission.⁴

3. In May 2000, TransIntel, a competitor of Highway as well as a user of Highway's equipment, submitted a Complaint to the Commission alleging that Highway made substantial changes to a previously certified low power AM transmitter without seeking to modify its equipment authorization,

¹ Letter from Kenneth R. Nichols, Chief of OET's Laboratory Division, to Donald J. Evans, November 17, 2000.

² See 47 CFR §§ 2.803, 2.1204.

³ The requirements of the Commission's equipment authorization procedure are set forth in Sections 2.1031-2.1060 of the rules, 47 C.F.R. §§ 2.1031-2.1060.

⁴ See 47 CFR § 2.929.

originally granted by the Commission in 1979. TransIntel cited several rule sections that this marketing of altered equipment allegedly violated. TransIntel also contended that Highway transferred control of this equipment authorization without notice to the Commission, in violation of our rules. It argued that by avoiding the delays and costs involved with testing and approval of a Certification application by the Commission, Highway gained a competitive advantage in the marketplace. TransIntel additionally raised an issue regarding improper labeling of Highway's device. It further also alleged that the Highway device caused interference in one case, due to a harmonic emission. TransIntel concluded by asking the Commission to revoke Highway's Certification, require a recall or retrofit of all units not in compliance with the original Certification, order a halt in marketing of the device, impose a fine commensurate with any profits on the unit, and hold a hearing on Highway's character and its consequent fitness to hold an FCC equipment Certification.

4. Highway responded to the TransIntel Complaint by submitting an application for equipment authorization, which OET granted. TransIntel then submitted a Petition for Reconsideration, asking that Highway's equipment authorization be rescinded, reiterating the arguments it made in the Complaint and adding that Highway implicitly acknowledged its rules violations when it filed for a new authorization for the transmitter it had already been selling. It repeated its contention that Highway should be penalized for marketing its device and transferring control of the equipment authorization without first obtaining a FCC approval.

5. On November 17, 2000, OET denied TransIntel's Petition for Reconsideration on the issue of whether the Certification should be revoked, while deferring its decision on whether to impose sanctions for violation of its rules.⁵ The staff decision stated that the Highway device had now been properly certified and that the interference concern raised in TransIntel's complaint had been resolved, so that revocation of the equipment authorization was not appropriate. That decision did not make any conclusions with regard to what type of forfeiture or other sanction, if any, might be appropriate, and specifically stated that enforcement action remained under consideration.

6. TransIntel then filed the instant Application for Review, on December 15, 2000, seeking review by the Commission of OET's decision on its Petition for Reconsideration in this matter.⁶ TransIntel continues to insist that Highway's Certification should be revoked or designated for hearing to determine whether Highway has the basic qualifications to hold an equipment certificate for the reasons stated above.

7. In its Opposition to the Application for Review, Highway insists that there is no basis for TransIntel's complaint, as the Highway transmitter was approved by the Commission in 1979⁷, and that the subsequent design changes were permissive in nature. Highway contends that TransIntel is abusing the Commission's process with its Complaint and subsequent pleadings. It asserts that TransIntel is motivated by a desire to avoid payment of a significant debt related to the equipment in question, and that TransIntel is seeking to harm Highway in the marketplace by being able to claim that Highway has an unresolved complaint pending at the FCC.

III. DISCUSSION

⁵ See n. 1, *supra*.

⁶ On August 3, 2001, TransIntel filed a Petition for Immediate Suspension and Permanent Revocation of Equipment Certification. This pleading is being considered as a supplemental filing to the Application for Review.

⁷ At the time of Highway's authorization for the subject equipment, the terminology for grant of an equipment authorization was "Type-acceptance." Type-acceptance and Certification are substantively equivalent in all respects pertinent here.

8. Highway claims that the modifications made to its Traveler's Advisory Transmitter were Class I permissive changes that do not change the emission characteristics of the device and do not require notification to the Commission. Highway is incorrect. As specified in section 2.907 of our rules (47 CFR § 2.907), Certification attaches only to units that are identical to the sample tested and approved, except for permissive changes authorized pursuant to section 2.1043 of our rules (47 CFR § 2.1043). Section 2.1043 prohibits changes to the basic frequency determining circuitry or maximum power ratings. If the specifications for frequency range, power output, and emission classification are varied, a new Certification is required. The modifications to the subject transmitter include changes in operating frequency and were extensive enough to require a new equipment authorization. As discussed above, that authorization was applied for and has been granted.

9. We are affirming OET's grant of the equipment authorization. While the equipment changes made by Highway were not permissive as defined by our rules, they were relatively innocuous and the resulting modified transmitter readily passed the Certification process. That transmitter is now properly certified. As the staff has already indicated, the possible imposition of appropriate sanctions for the sale of unauthorized equipment under the circumstances presented here would be properly pursued as an enforcement matter. However, since the one-year statute of limitations has passed and no enforcement action has been taken, the Commission is not in a position to issue a sanction such as Notice of Liability in this case.⁸ We also find that the revocation of the equipment authorization sought by TransIntel is not an appropriate remedy or sanction in this case. We have stated before that violation of section 2.803 of our rules generally does not form the basis for a denial of an equipment authorization.⁹ At the same time, we recognize that the perpetration of a fraud on the Commission or conduct likely to undermine the integrity of the equipment authorization process could form the basis of such a denial.¹⁰ However, TransIntel has not raised a substantial and material question of fact as to whether Highway's actions were so willful or deliberate as to rise to the level of implicating Highway's fitness to hold a FCC equipment authorization. We may, of course, call in further post-grant samples of the Highway device to ensure that it continues to comply with its equipment authorization. Any new instance of non-compliance by Highway could result in sanctions including fines and forfeitures. Continuous or repeated noncompliance also could call into question Highway's fitness to hold an equipment authorization.¹¹

10. Finally, we note that the interference that TransIntel cites as a negative consequence of the modifications was not the result of a rule violation or the lack of appropriate re-Certification. The interference cited by TransIntel was apparently due to a 22nd harmonic. Our rules require testing only through ten harmonics. Thus, had Highway earlier sought Commission approval of its modified device, this potential for interference would not likely have been discovered in the absence of the later complaint. The Commission's rules and regulations require Highway to address any harmful interference when it occurs; Highway fully complied with this requirement when it learned of the interference.

⁸ See 47 CFR 1.80 (a) (3).

⁹ See, Toshiba Corp., 57 Rad. Reg. 2d (P & F) 1619 (1985).

¹⁰ Id.

¹¹ Id.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), That the Application for Review filed by Transportation Intelligence, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary